

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

OWENS CORNING
One Owens Corning Parkway
Toledo, Ohio 43659

and

OWENS CORNING INTELLECTUAL
CAPITAL, LLC
One Owens Corning Parkway
Toledo, Ohio 43659,

Plaintiffs,

vs.

PINK ENERGY, LLC
One Turks Head Place, Suite 1200
Providence, Rhode Island 02903

and

POWER HOME SOLAR LLC
dba PINK ENERGY
919 North Main Street
Mooresville, North Carolina 28115,

Defendants.

CASE NO. _____

JUDGE _____

**COMPLAINT WITH JURY DEMAND
ENDORSED HEREON**

Plaintiffs Owens Corning and Owens Corning Intellectual Capital, LLC (collectively, “Owens Corning”) seek injunctive and monetary relief against Defendants Pink Energy, LLC and Power Home Solar LLC dba Pink Energy (collectively, “Pink Energy” or “Defendants”) from their infringement and dilution of Owens Corning’s well-known and famous, federally registered PINK® color- and word trademarks for insulation and related energy-saving products. Defendants have violated and are violating the federal Lanham Act, 15 U.S.C. § 1125(a) et seq.,

the Anti-Cybersquatting Protection Act, and Ohio statutory and common law by making unauthorized use of Owens Corning's PINK® trademarks in connection with insulation and roofing-related solar energy products and services that Defendants offer as a package to consumers.

Defendants' imitation of Owens Corning's famous and well-known registered trademarks for energy-saving products is no coincidence:

Owens Corning's Registered Trademark

Defendants' Unauthorized Mark

PINK COLOR®

PINK COLOR

PINK® (word trademark)

PINK (word trademark)

1-800-GET PINK®

1-877-4-GO-PINK

PINK IS GREEN®

THINK GREEN. GO PINK

THE PARTIES

1. Plaintiff Owens Corning is a Delaware corporation with its world headquarters and principal place of business at One Owens Corning Parkway, Toledo, Ohio 43659.

2. Plaintiff Owens Corning Intellectual Capital, LLC is a Delaware limited liability company with its principal place of business at One Owens Corning Parkway, Toledo, Ohio 43659.

3. Upon information and belief, Defendant Power Home Solar LLC is a Delaware limited liability company doing business as Pink Energy, with its principal place of business at 919 North Main Street, Mooresville, North Carolina 28115.

4. Upon information and belief, Defendant Pink Energy LLC is a Delaware limited liability company with its principal place of business at One Turks Head Place, Suite 1200, Providence, Rhode Island 02903.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over the claims in this action pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338, and 1367 because it arises, in part, pursuant to 15 U.S.C. § 1114.

6. The Defendants are subject to this Court's personal jurisdiction because they: (1) transact business within the State of Ohio and this District; (2) contract to supply goods or services in the State of Ohio and this District; and (3) have committed the tortious acts specified herein within the State of Ohio and this District.

7. Venue is proper under 28 U.S.C. §§ 1391(b)(1), 1391(b)(2), and 1391(c).

FACTUAL ALLEGATIONS

A. Owens Corning and Its Federally Registered and Famous PINK® Trademarks

8. Founded in 1938, Owens Corning sells insulation systems to help homes and commercial buildings conserve energy. Owens Corning has offered pink insulation since 1956 to distinguish its product. Since that time, Owens Corning has used the color pink in connection with the packaging, promotion, distribution, and selling of its various best-selling insulation products, and has expanded its use of the color pink, as well as the use of the word "pink," into other energy-saving building products and associated services.

9. Representative photographs and screenshots showing some of the ways in which Owens Corning uses and promotes the color pink and/or the word “pink” in connection with its various products and services are shown below:





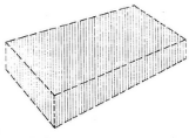
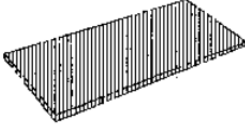
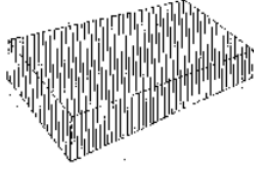

10. Consumers and builders interested in purchasing or learning more about Owens Corning's products and systems can call the number 1-800-GET-PINK, which Owens Corning advertises on its website, as shown by the screenshot below:

CONTACT US

Even though we're a global company, we're always ready to answer your questions. Call to speak with an Owens Corning representative so you can start your project right away.

1-800-GET-PINK®

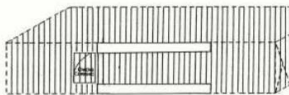

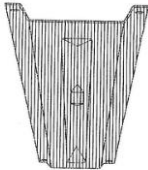
11. Owens Corning is the owner of registered and common law rights to the PINK® word mark and the PINK® color trademark in connection with insulation, roofing, and other energy-saving products for homes and buildings, and associated services (collectively, "PINK Marks"). In fact, Owens Corning's well-known PINK® colored insulation famously was the first single-color trademark to achieve federal registration in the United States in 1987. Representative examples of Owens Corning's U.S. PINK Marks are described below:

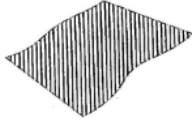
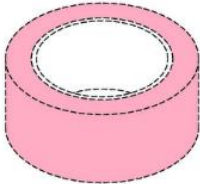
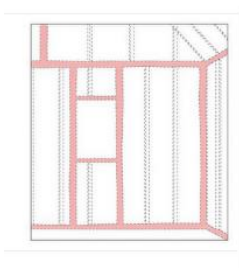
Mark App. No. Reg. No.	Status/Key Dates	Full Goods/Services
PINK REG. NO.: 3885949 APP. NO.: 85016615	First Use: April 30, 2009 Filed: April 18, 2010 Registered: December 7, 2010	Int'l Class: 17 Insulating materials
PINK COLOR  REG. NO.: 1439132 APP. NO.: 73247707	First Use: 1956 Filed: January 25, 1980 Registered: May 12, 1987	Int'l Class: 17 fibrous glass residential insulation
PINK COLOR  REG. NO.: 2090588 APP. NO.: 75050728	First Use: September 13, 1978 Filed: January 29, 1996 Registered: August 26, 1997	Int'l Class: 17 foam insulation for use in building and construction
PINK COLOR  REG. NO.: 2380742 APP. NO.: 75639297	First Use: 1956 Filed: February 8, 1999 Registered: August 29, 2000	Int'l Class: 17 building insulation
PINK COLOR  	First Use: November 15, 2000 Filed: July 28, 2000 Registered: March 11, 2003	Int'l Class: 19 roofing shingles

REG. NO.: 2695673 APP. NO.: 78018788		
1-800-GET-PINK REG. NO.: 3811248 APP. NO.: 77069068	First Use: July 31, 2008 Filed: December 21, 2006 Registered: June 29, 2010	Int'l Class: 35 Advertising, marketing and promotion services for others; providing information and advice regarding marketing and business management, and cooperative marketing and advertising services, business advertising and marketing consultation, providing referrals to contractors
1-800-GET-PINK REG. NO.: 3705738 APP. NO.: 77069065	First Use: January 31, 2007 Filed: December 21, 2006 Registered: November 3, 2009	Int'l Class: 37 Providing information and advice in the field of building and construction
1-800-GET-PINK REG. NO.: 3573083 APP. NO.: 77069070	First Use: December 31, 1998 Filed: December 21, 2006 Registered: February 10, 2009	Int'l Class: 19 non-metal roofing shingles; non-metal attic rafter vents
1-800-GET-PINK REG. NO.: 3712428 APP. NO.: 77069075	First Use: April 30, 2004 Filed: December 21, 2006 Registered: November 17, 2009	Int'l Class: 17 insulation for building and construction; fiber glass panels for acoustic and thermal insulation
PINK ADVANTAGE REG. NO.: 4347323 APP. NO.: 85387082	First Use: February 1, 2013 Filed: August 2, 2011 Registered: June 4, 2013	Int'l Class: 35 program to assist building materials dealers in selling building material products, preparing advertising and marketing materials, providing information and advice regarding marketing and business management, and cooperative marketing and cooperative advertising services

PREFERRED PINK REG. NO.: 4347329 APP. NO.: 85389716	First Use: February 1, 2013 Filed: August 4, 2011 Registered: June 4, 2013	Int'l Class: 35 program to assist building materials dealers in selling building material products, preparing advertising and marketing materials, providing information and advice regarding marketing and business management, and cooperative marketing and cooperative advertising services
PINK IS GREEN REG. NO.: 3476459 APP. NO.: 77362596	First Use: December 28, 2007 Filed: January 2, 2008 Registered: July 29, 2008	Int'l Class: 17 Building insulation
PINK NEXT GEN REG. NO.: 6623845 APP. NO.: 90365841	First Use: June, 2021 Filed: December 8, 2020 Registered: January 18, 2022	Int'l Class: 17 Insulating materials
DURAPINK REG. NO.: 1848205 APP. NO.: 74335445	First Use: February 14, 1993 Filed: November 30, 1992 Registered: August 2, 1994	Int'l Class: 19 roofing recovery board
INSULPINK REG. NO.: 2036673 APP. NO.: 74732234	First Use: December 6, 1995 Filed: September 21, 1995 Registered: February 11, 1997	Int'l Class: 17 polystyrene insulation for buildings
PINKCORE REG. NO.: 3134201 APP. NO.: 78528151	First Use: October 6, 1997 Filed: December 7, 2004 Registered: August 22, 2006	Int'l Class: 17 building insulation
PINK TANK REG. NO.: 6741190 APP. NO.: 90608837	First Use: June, 2021 Filed: March 29, 2021 Registered: May 24, 2022	Int'l Class: 42 Computer modeling services involving composite materials

PINKBAR REG. NO.: 6196627 APP. NO.: 88626483	First Use: February 4, 2020 Filed: September 23, 2019 Registered: November 10, 2020	Int'l Class: 19 Fiberglass rebar
PINKWRAP REG. NO.: 2021199 APP. NO.: 74533814	First Use: January 16, 1995 Filed: June 6, 1994 Registered: December 3, 1996	Int'l Class: 17 air infiltration and weather barrier for use in building construction
PROPINK REG. NO.: 4318402 APP. NO.: 85521537	First Use: May 1, 2012 Filed: January 20, 2012 Registered: April 9, 2013	Int'l Class: 03 Cleaning solvent, namely, cleaning preparations
PROPINK REG. NO.: 2248313 APP. NO.: 75371317	First Use: March 5, 1997 Filed: October 10, 1997 Registered: May 25, 1999	Int'l Class: 17 insulation used in building and construction
PROPINK REG. NO.: 2133419 APP. NO.: 75227809	First Use: March 5, 1997 Filed: January 17, 1997 Registered: January 27, 1998	Int'l Class: 17 foam sheeting for use as a building insulation
PROPINK COMFORTSEAL REG. NO.: 5514576 APP. NO.: 87238111	First Use: December 5, 2017 Filed: November 15, 2016 Registered: July 10, 2018	Int'l Class: 17 Spray sealant for use in buildings and building construction; foam insulation for use in building and construction; Foam sill gasket for use between the sill plate and foundation walls; foam framing gasket for use in the top plate and rim in residential construction; polyurethane foam sealant for use in connection with residential and commercial buildings
PROPINK ONE	First Use: June 12, 2012 Filed: October 3, 2011	Int'l Class: 17 Foam sealant for use in

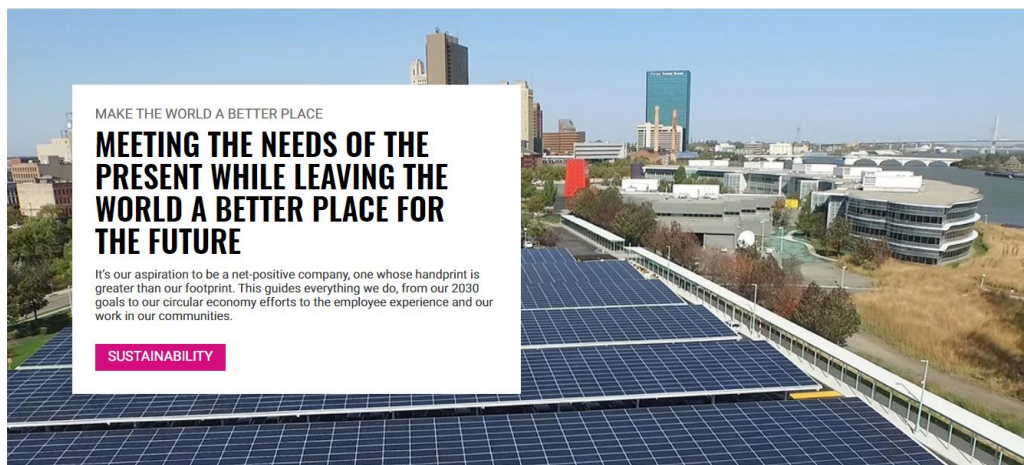
REG. NO.: 4589098 APP. NO.: 85437751	Registered: August 19, 2014	connection with residential and commercial buildings
PROPINK SUB-ZERO REG. NO.: 4589100 APP. NO.: 85445051	First Use: June 12, 2012 Filed: October 12, 2011 Registered: August 19, 2014	Int'l Class: 17 Foam sealant for use in connection with residential and commercial buildings
THERMAPINK REG. NO.: 2072858 APP. NO.: 75073617	First Use: July 30, 1996 Filed: March 15, 1996 Registered: June 17, 1997	Int'l Class: 17 foam insulation used in roofing applications
PINK COLOR + OWENS CORNING  REG. NO.: 2808451 APP. NO.: 78018791	First Use: November 15, 2000 Filed: July 28, 2000 Registered: January 27, 2004	Int'l Class: 19 roofing shingles
PINK COLOR 	Filed: January 23, 2020 Allowed	Int'l Class: 19 Fiberglass rebar
PINK COLOR 	First Use: March 15, 1993 Filed: August 31, 1998 Registered: August 29, 2000	Int'l Class: 19 extruded polystyrene attic rafter vents for use as a component of an insulation system

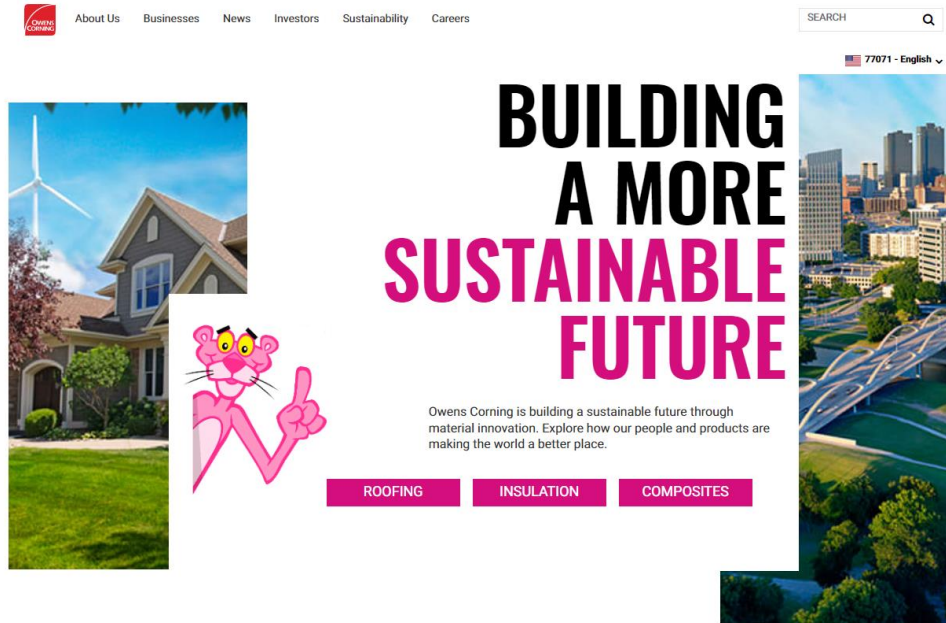
REG. NO.: 2380445 APP. NO.: 75544715		
PINK COLOR  REG. NO.: 2349499 APP. NO.: 75544722	First Use: January 16, 1995 Filed: August 31, 1998 Registered: May 16, 2000	Int'l Class: 17 Air infiltration and moisture barrier for use in building construction, sold in rolls
PINK COLOR  REG. NO.: 3165001 APP. NO.: 78724143	First Use: May 2, 1995 Filed: September 30, 2005 Registered: October 31, 2006	Int'l Class: 17 Adhesive masking tape used in building construction for seaming and sealing of joints in foam insulation and other sheathing materials, to secure lap edges in house wraps and vapor barriers and to repair rips and tears in faced insulation, construction films and membranes
PINK COLOR  REG. NO.: 4128046 APP. NO.: 85306082	First Use: April 29, 2009 Filed: April 27, 2011 Registered: April 17, 2012	Int'l Class: 17 Spray foam sealant for use in connection with residential and commercial construction projects

12. Owens Corning's registrations identified in the chart above are valid and subsisting, and constitute *prima facie* evidence of the validity thereof and of Owens Corning's ownership and exclusive right to use the PINK Marks, and are constructive notice of Owens


Corning's ownership thereof, all as provided by §§ 7(b) and 22 of the Federal Trademark Act of 1946, as amended. Additionally, many of these registrations are incontestable under 15 U.S.C. § 1065, and are therefore conclusive evidence of the validity of the registered marks, of Owens Corning's ownership of the marks and of Owens Corning's exclusive right to use the marks with the covered goods.

13. Owens Corning is committed to building a sustainable future through the sale and use of its energy-saving products. Owens Corning has been a leader in this area, making its first Corporate Stewardship commitment in 1993 and establishing a Chief Sustainability Officer reporting to the CEO since 2007. As shown below, Owens Corning uses the PINK Marks on its website to advertise its company mission of "building a sustainable future through material innovation":





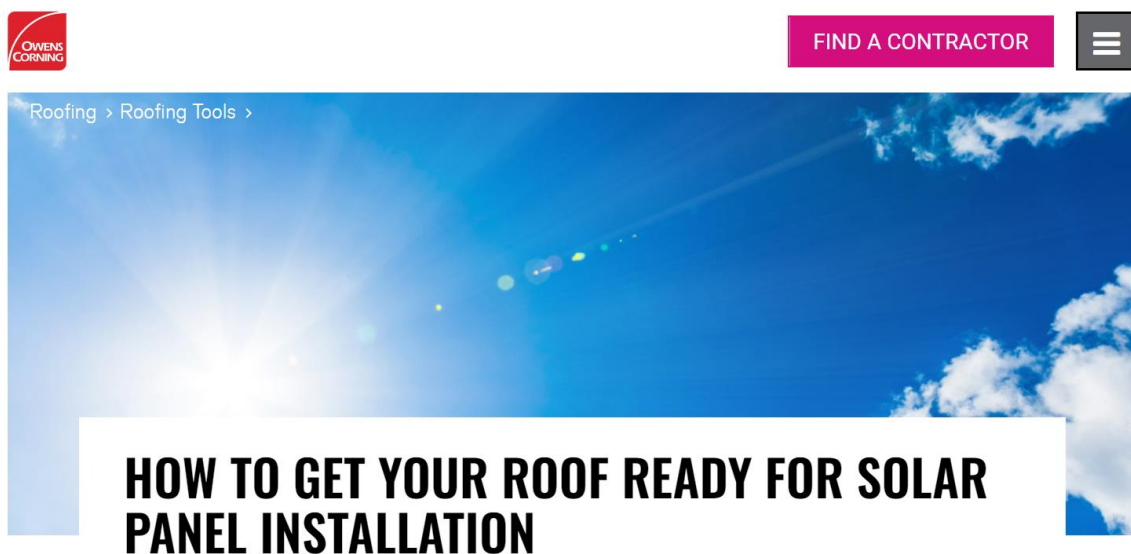
14. As shown below, Owens Corning also underscores the energy conservation benefits of its insulation products using the PINK Marks by placing its federally registered “pink is green”[®]

mark () on the packaging for its products:



15. Over the years, Owens Corning has won a variety of awards related to energy conservation, including ranking #1 four years in a row (from 2019 to 2022) on 3BL Media's list of 100 Best Corporate Citizens, which recognizes outstanding environmental, social and governance (ESG) transparency and performance among the 1,000 largest, publicly traded U.S. companies.

16. Owens Corning has invested substantial resources in designing, manufacturing, promoting, marketing, advertising, distributing, and selling insulation, roofing, and other energy-saving products and associated services under its PINK Marks. Owens Corning's energy-saving products are also frequently marketed, purchased and used in combination and connection with solar panels on or near the roofs of homes. Owens Corning has a network of contractors that includes partners who install insulation, solar panels and other rooftop products. Owens Corning also uses its PINK Marks to guide customers on how to prepare a roof for a solar panel installation:



17. Owens Corning has also used its PINK Marks in connection with its offering of other energy-saving products including attic staircase insulators, sealant tapes, attic solar fans, and hot water tank blankets.

18. As a result of Owens Corning's long and continuous use of the PINK Marks, its substantial sales of product and significant investment in advertising and promoting its products under the PINK Marks, the PINK Marks have become well-known as uniquely associated with Owens Corning and an indication of origin, and have become famous.

B. Defendants' Unlawful Conduct

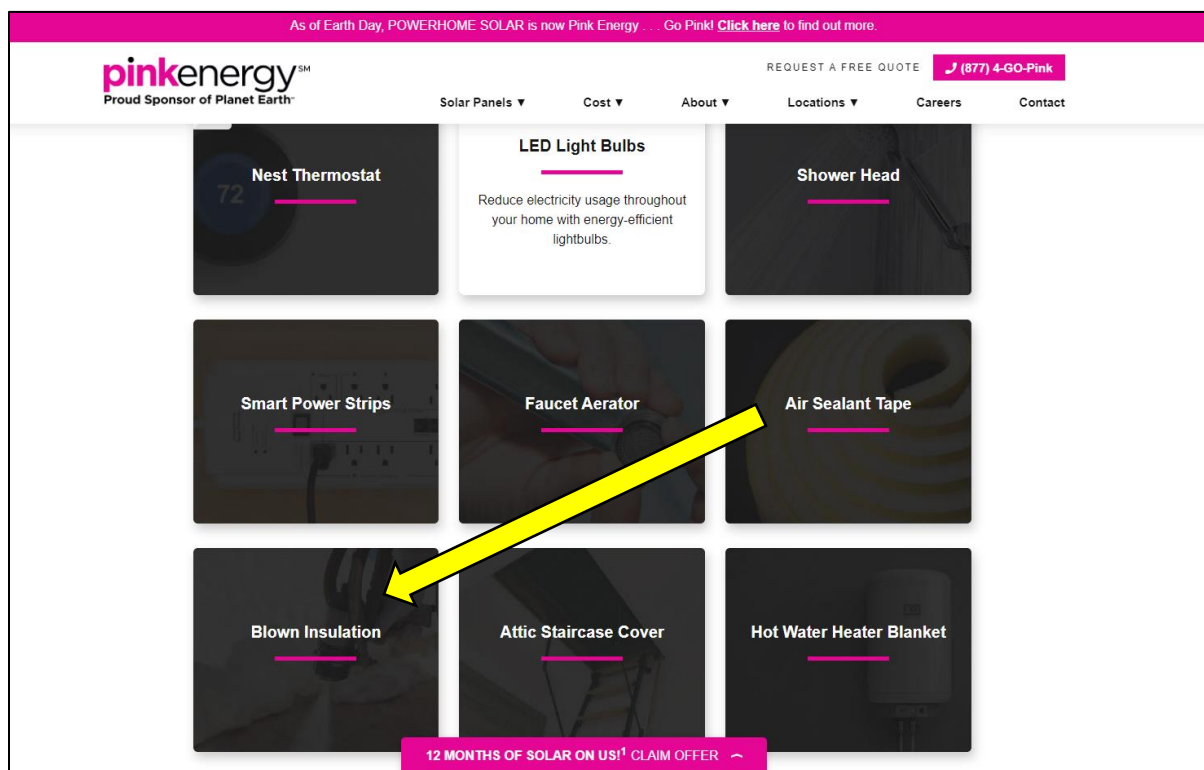
19. Upon information and belief, Defendants were founded under the name Powerhome Solar in 2014 to sell and install energy-saving solar roofing systems, panels, equipment, and related products, including insulation, to consumers. Upon information and belief, Defendant's solar equipment is commonly installed on rooftops, including rooftops that include Owens Corning PINK-branded roofing products, such as Owens Corning's solar-reflective shingles.

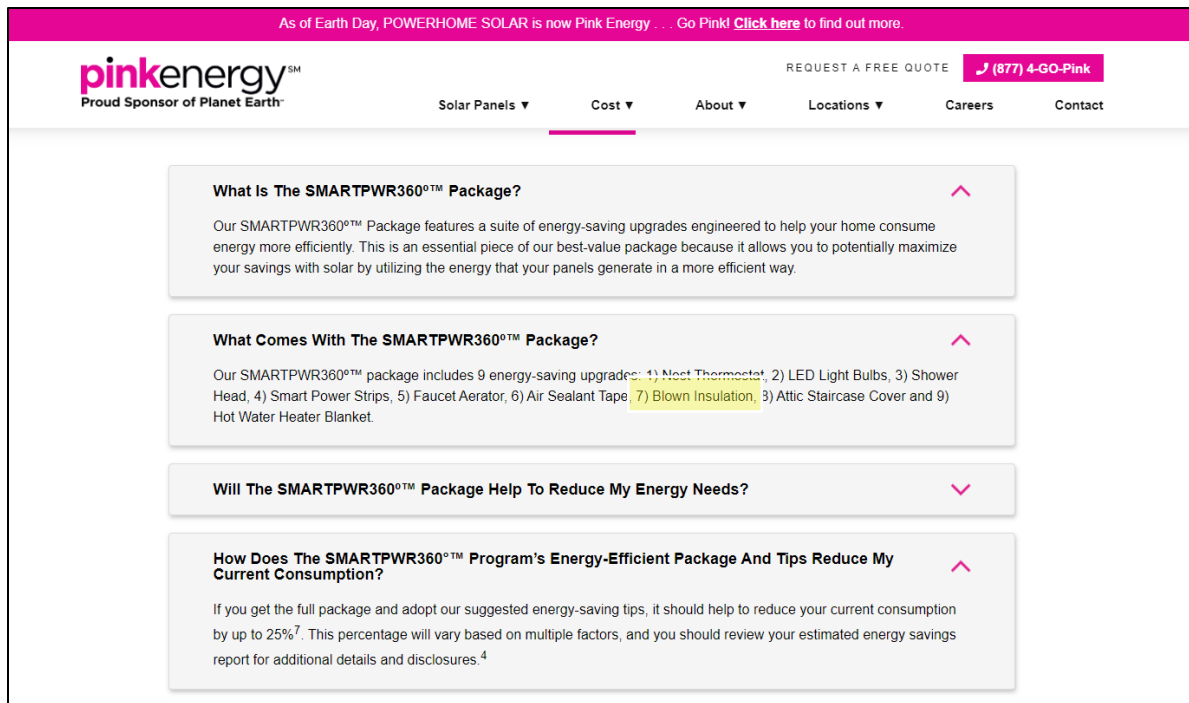
20. Upon information and belief, in late 2021 and early 2022, Defendants received a dramatic and massive amount of customer service calls, complaints and negative publicity about their product burning, melting and malfunctioning.

21. On or about May 1, 2022, Defendants rebranded and began doing business as PINK ENERGY. Defendants described themselves as an "energy efficiency company" that offers "a complete energy-savings package for residential customers." Defendants' energy-savings package includes blown insulation as well as solar panels and an attic staircase insulator, just as Owens Corning offers blown insulation and attic staircase insulators. Defendants offer all of

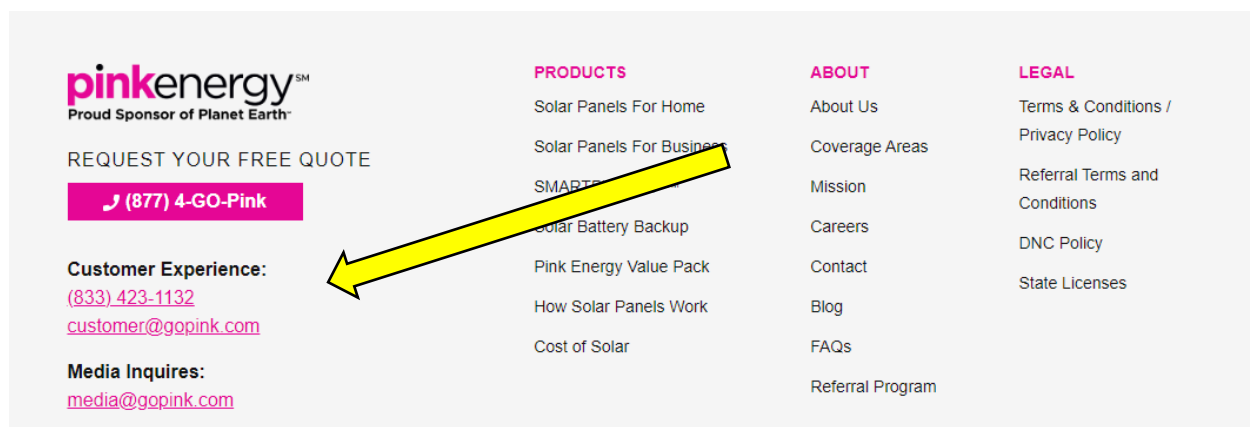
these goods and services under the PINK word trademark and prominently featuring the color pink in advertising and marketing that mimics Owens Corning's PINK Marks.

22. In connection with the rebrand, Defendants also began marketing their energy-efficiency products and services on the website gopink.com using both the word trademark PINK and the color pink. Defendants' marketing includes an identical and/or highly similar shade of pink to that used and registered by Owens Corning. For example:

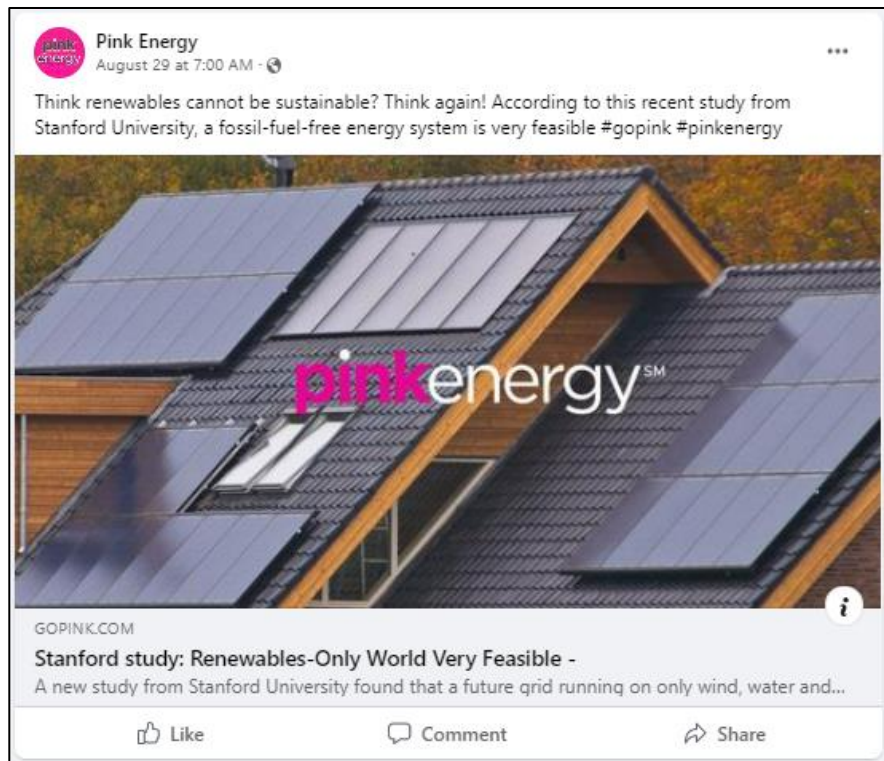




23. And while Owens Corning has long used its 1-800-GET PINK[®] trademark, Defendants have adopted (877) 4-GO-Pink for its energy-saving goods and services to consumers:



24. Defendants have also used Owens Corning's PINK word and color trademarks on social media featuring images of roofs with shingles as well as solar panels:



25. Defendants thus market their energy-saving solar roofing systems, panels, equipment, and related products, including insulation, to consumers through the same or similar channels as Owens Corning.

26. And despite Owens Corning's registered PINK IS GREEN® mark, Defendants even filed with the United States Patent & Trademark Office an intent-to-use application to register the mark THINK GREEN. GO PINK. in connection with, among other things, "[p]romoting public awareness of ... energy efficiency products; [and] Providing consumer and business information in the field of ... energy efficiency products."

C. Defendants Refuse To Stop Their Unauthorized Use of Owens Corning's PINK Marks

27. Given the identical and highly similar nature of the parties' respective marks, goods, services, and marketing materials, Owens Corning, concerned by the threat of likely

confusion in the marketplace, sent a letter to Defendants on June 22, 2022, which requested that Defendant timely cease use of Owens Corning's PINK Marks, including the word PINK and the color pink.

28. Defendants responded by acknowledging, among other things, that they are marketing primarily to residential homeowners and "recognized that other complimentary related offerings" to solar panels are "essential[.]" As of the filing of this Complaint, however, Defendants have refused to cease and desist from their use of the PINK Marks.

29. Meanwhile, upon information and belief, Defendants' defective product has begun to pile up in Defendants' warehouses, and Defendants have received an overwhelming number of negative reviews and complaints to the Better Business Bureau, social media, and other review platforms.

30. Owens Corning has not authorized the use of the PINK Marks by Defendants in any manner. Owens Corning continues to be harmed by Defendants' unauthorized use of the PINK Marks.

31. Defendants' continued infringement of the PINK Marks is willful.

32. Defendants' conduct has caused and will continue to cause irreparable injury to Owens Corning's goodwill and reputation, for which Owens Corning has no adequate remedy at law.

COUNT I
TRADEMARK INFRINGEMENT
(15 U.S.C. § 1114)

33. Owens Corning incorporates by reference each and every allegation contained in Paragraphs 1 through 32 of this Complaint as though fully set forth herein.

34. Owens Corning's use of the federally registered PINK Marks predates any alleged first use by Defendants.

35. Defendants' use of the PINK Marks in connection with solar energy panels, insulation, and related goods and services is likely to deceive and cause confusion and mistake among consumers as to the source or origin of the goods and services provided or offered for sale by Defendants and the sponsorship or endorsement of those goods and services by Owens Corning.

36. Defendants' use of the PINK Marks in connection with solar energy panels, insulation, and related goods and services is likely to deceive and cause confusion and mistake among consumers as to the source or origin of the goods and services provided by Owens Corning and the sponsorship or endorsement of those goods by Defendants.

37. Owens Corning has never authorized, licensed, or otherwise condoned or consented to Defendants' use of the PINK Marks.

38. Defendants have misappropriated and continue to misappropriate Owens Corning's substantial property rights in the PINK Marks, as well as the goodwill associated therewith. Unless restrained and enjoined by this Court, such conduct will permit Defendants to gain an unfair competitive advantage over Owens Corning and allow Defendants to improperly interfere with Owens Corning's continued promotion and expansion of its business.

39. The acts of Defendants alleged above were committed willfully, with full knowledge of Owens Corning's rights and with the intention to deceive and mislead the public.

40. The acts of Defendants alleged above were committed willfully, with full knowledge of Owens Corning's rights and with the intention of causing harm to Owens Corning.

41. The acts of Defendants alleged above were committed willfully, with full knowledge of Owens Corning's rights and with the intention of misappropriating and wrongfully trading upon the valuable goodwill and reputation of Owens Corning and the PINK Marks.

42. Defendants will continue their ongoing acts of trademark infringement, causing irreparable injury to Owens Corning, unless such activities are enjoined by this Court.

43. As a direct and proximate result of Defendants' unlawful activities, Owens Corning has and continues to suffer damages in an amount that is not presently ascertainable, but will be determined at trial.

COUNT II
TRADEMARK INFRINGEMENT AND UNFAIR COMPETITION
(15 U.S.C. §1125(a))

44. Owens Corning incorporates by reference each and every allegation contained in Paragraphs 1 through 43 of this Complaint as though fully set forth herein.

45. Defendants' use of Owens Corning's common-law PINK Marks in connection with solar energy panels, insulation, and related goods and services is likely to deceive and cause confusion among consumers as to the source or origin of the goods and services provided or offered for sale by Defendants and the sponsorship or endorsement of those goods and services by Owens Corning.

46. Owens Corning has never authorized, licensed, or otherwise condoned or consented to Defendants' use of the PINK Marks.

47. Defendants have misappropriated and continue to misappropriate Owens Corning's substantial property rights in the PINK Marks, as well as the goodwill associated

therewith. Unless restrained and enjoined by this Court, such conduct will permit Defendants to gain an unfair competitive advantage over Owens Corning and allow Defendants to improperly interfere with Owens Corning's continued promotion and expansion of its business.

48. The acts of Defendants alleged above were committed willfully, with full knowledge of Owens Corning's rights and with the intention to deceive and mislead the public.

49. The acts of Defendants alleged above were committed willfully, with full knowledge of Owens Corning's rights and with the intention of causing harm to Owens Corning.

50. The acts of Defendants alleged above were committed willfully, with full knowledge of Owens Corning's rights and with the intention of misappropriating and wrongfully trading upon the valuable goodwill and reputation of Owens Corning and the PINK Marks.

51. Defendants will continue their ongoing acts of unfair competition, causing irreparable injury to Owens Corning, unless such activities are enjoined by this Court.

52. As a direct and proximate result of Defendants' unlawful activities, Owens Corning has suffered and will continue to suffer damages in an amount that is not presently ascertainable, but will be established at trial.

COUNT III
FEDERAL TRADEMARK DILUTION
(15 U.S.C. § 1125(c))

53. Owens Corning incorporates by reference each and every allegation contained in Paragraphs 1 through 52 of this Complaint as though fully set forth herein.

54. The PINK Marks are widely recognized by the general public and have acquired fame throughout the United States, entitling them to protection from federal trademark dilution.

55. Defendants' use of the PINK Marks began after the PINK Marks became famous.

56. Defendants' use of the PINK Marks, without authorization from Owens Corning, is likely to dilute the distinctive quality of the PINK Marks and to decrease the capacity of those marks to identify and distinguish Owens Corning's goods and services, and is likely to cause harm to Owens Corning's business reputation.

57. The acts of Defendants alleged above constitute trademark dilution in violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

58. The acts of Defendants alleged above were committed willfully, with full knowledge of Owens Corning's rights and with the intention of deceiving and misleading the public and causing harm to Owens Corning.

59. Defendants will continue their ongoing acts of trademark dilution, causing irreparable injury to Owens Corning, unless such activities are enjoined by this Court

60. As a direct and proximate result of Defendants' unlawful acts, Owens Corning has suffered and will continue to suffer damages in an amount that is not presently ascertainable, but will be established at trial.

COUNT IV
VIOLATION OF THE ACPA
(15 U.S.C § 1125(d)(1)(A))

61. Owens Corning incorporates by reference each and every allegation contained in Paragraphs 1 through 60 of this Complaint as though fully set forth herein.

62. Owens Corning owns the exclusive rights to the PINK Marks.

63. Defendants reserved, registered, and are using gopink.com (“the Infringing Domain Name”) knowingly, willfully, and in complete disregard of Owens Corning’s exclusive rights in and to the PINK Marks.

64. Defendants reserved, registered, and are using the PINK mark in the Infringing Domain Name with a bad faith intent to profit from the use of the PINK mark.

65. The Infringing Domain Name is confusingly similar to the PINK mark.

66. Defendants reserved, registered, and are using the Infringing Domain Name with the intent to create a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the goods and services promoted and sold on its website.

67. Defendants will continue their acts of cyberpiracy, causing irreparable injury to Owens Corning, unless such activities are enjoined by this Court.

68. As a direct and proximate result of Defendants’ unlawful activities, Owens Corning has suffered and will continue to suffer damages in an amount that is not presently ascertainable, but will be established at trial.

COUNT V
DECEPTIVE TRADE PRACTICES
(O.R.C. § 4165.02)

69. Owens Corning incorporates by reference each and every allegation contained in Paragraphs 1 through 68 of this Complaint as though fully set forth herein.

70. Through the conduct described herein, Defendants have engaged in unfair competition and deceptive trade practices in violation of the Ohio Deceptive Trade Practices Act, O.R.C. § 4165.02.

71. Defendants' conduct has been deliberate and willful and has been committed with the intent to cause confusion and misunderstanding as to the source, sponsorship, approval, or certification of Defendants' goods and services.

72. Defendants' conduct has been deliberate and willful and has been committed with the intent to cause confusion and misunderstanding as to the affiliation, connection, or association with Owens Corning.

73. Defendants' acts and practices in violation of the Ohio Deceptive Trade Practices Act, as set forth above, have caused and, unless restrained by this Court, will continue to cause serious and irreparable harm and damage to Owens Corning, for which it has no adequate remedy at law.

74. As a direct and proximate result of Defendants' unlawful activities, Owens Corning has suffered and will continue to suffer damages in an amount that is not presently ascertainable, but will be established at trial.

COUNT VI
UNFAIR COMPETITION
(Ohio Common Law)

75. Owens Corning incorporates by reference each and every allegation contained in Paragraphs 1 through 74 of this Complaint as though fully set forth herein.

76. Through the conduct described herein, Defendants have engaged in unfair competition under the common law of Ohio.

77. Defendants' conduct has been deliberate and willful and has been committed with the intent to cause confusion and mistake, to deceive the public, and/or to misrepresent the

affiliation, connection, or sponsorship of Defendants' goods, services, and commercial activities with Owens Corning.

78. Defendants' unlawful acts and practices, as set forth above, have caused and, unless restrained by this Court, will continue to cause serious and irreparable harm and damage to Owens Corning, for which it has no adequate remedy at law.

79. As a direct and proximate result of Defendants' unlawful activities, Owens Corning has suffered and will continue to suffer damages in an amount that is not presently ascertainable, but will be established at trial.

PRAYER FOR RELIEF

WHEREFORE, Owens Corning respectfully requests that this Court enter judgment in its favor and against Defendants as follows:

A. Declaring that Defendants' unauthorized use of the PINK Marks infringes Owens Corning's valid intellectual property rights;

B. Declaring that Defendants' unauthorized use of the PINK Marks is likely to dilute Owens Corning's famous and distinctive PINK Marks;

C. Declaring that Defendants' conduct was knowing, intentional, and willful;

D. Preliminarily and permanently enjoining Defendants, their officers, principals, agents, employees, and those persons acting in active concert or participation with Defendants, or on their behalf, from:

1. Using (including, but not limited to, in connection with the promotion, marketing, advertising and sale of goods or services) the PINK Marks for goods or services, a business or trade name, or on the internet, or as domain names, email addresses, meta

tags, or invisible data, or on Defendants' websites or any other website, or otherwise engaging in acts or conduct that would cause confusion as to the source, sponsorship, or affiliation of Defendants with Owens Corning;

2. Using any reproduction or colorable imitation of the PINK Marks, or any mark similar thereto or dilutive thereof, for goods or services, as a business or trade name, or on the internet, or as domain names, email addresses, meta tags, or invisible data, or on Defendants' websites or any other website; and

3. Engaging in any acts of unfair competition with Owens Corning or other conduct that suggests or tends to suggest to the public that Defendants are in any manner, directly or indirectly, affiliated, connected, or associated with Owens Corning or that Defendants' goods, services, or commercial activities originate from or are sponsored or approved by Owens Corning;

E. Ordering that all signage, advertisements, labels, prints, packages, wrappers and receptacles in the possession of Defendants bearing the PINK Marks, or any colorable imitation thereof, be destroyed, and that the PINK Marks and any colorable imitations be removed from all Internet web sites, online advertising, marketing, promotions or other online materials, pursuant to 15 U.S.C. § 1118;

F. Ordering Defendants, pursuant to 15 U.S.C. § 1116(a), to file with the Court and serve on Owens Corning's counsel within 30 days after service of the injunction, a written report, sworn under oath, setting forth in detail the manner and form in which Defendants have complied with the injunction;

G. Ordering Defendants to transfer registration of the Infringing Domain Name to Owens Corning;

H. Ordering Defendants to account to Owens Corning for all profits made by them in connection with any and all commercial activity relating to their use of the PINK Marks;

I. Awarding Owens Corning any and all monetary damages resulting from Defendants' intentional, willful, and wanton unlawful acts as described herein, in an amount to be determined at trial;

J. Awarding Owens Corning its costs and attorneys' fees pursuant to 15 U.S.C. § 1117 and state law;

K. Awarding Owens Corning any and all profits realized by Defendants as a result of Defendants' wrongful and unlawful acts described herein, pursuant to 15 U.S.C. § 1117;

L. Awarding Owens Corning treble damages pursuant to 15 U.S.C. § 1117;

M. Awarding Owens Corning its costs, disbursements, expenses, and reasonable attorneys' fees in this action; and

N. Awarding Owens Corning such other and further relief as this Court deems just and proper.

Dated: September 13, 2022

Respectfully submitted,

/s/ Peter R. Silverman

Peter R. Silverman (0001579)

psilverman@shumaker.com

SHUMAKER, LOOP & KENDRICK, LLP

1000 Jackson Street

Toledo, Ohio 43604-5573

Telephone: (419) 321-1307

Facsimile: (419) 241-6894

Angela R. Gott (Ohio Bar No. 0082198)

agott@jonesday.com

JONES DAY

North Point

901 Lakeside Avenue

Cleveland, Ohio 44114-1190

Telephone: (216) 586-3939

Facsimile: (216) 579-0212

John G. Froemming [*pro hac vice* forthcoming]

jfroemming@jonesday.com

JONES DAY

51 Louisiana Avenue NW

Washington, DC 20001

Telephone: (202) 879-3939

Facsimile: (202) 626-1700

Attorneys for Plaintiffs

Owens Corning and

Owens Corning Intellectual Capital, LLC

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), Owens Corning respectfully demands a trial by jury on all issues so triable.

/s/ Peter R. Silverman

Peter R. Silverman (0001579)

SHUMAKER, LOOP & KENDRICK LLP

Attorneys for Plaintiffs

Owens Corning and

Owens Corning Intellectual Capital, LLC